

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO.

In the Matter of

VIRIDIAN ENERGY, LLC

The Commonwealth of Massachusetts (the “Commonwealth”), by and through its Attorney General Maura Healey (“AGO”), hereby enters into this Assurance of Discontinuance (“Assurance”) and its provisions with Viridian Energy, LLC (“Viridian”), without trial or adjudication of any issue of fact or law. The parties enter into this Assurance to resolve the Commonwealth’s alleged claims against Viridian without the risks and expenses associated with litigation. The Effective Date shall be May 1, 2018.

1. “Basic Service” shall mean that term as it is defined in G.L. c. 164, § 1.
2. “Billing Data Document” shall mean a document, in either an Excel spreadsheet, SQL database, or other industry-standard format as requested by an independent trustee (the “Trustee”), containing accurate and complete billing data for each Massachusetts Customer, including the Customer’s name, address, account numbers (both Viridian’s internal account number and the account number used by the Distribution Company), product type, third-party vendor responsible for the Customer’s enrollment (if any), and, by month, electricity consumption, any and all Electricity Supply charges, any credits or reimbursements provided to the Customer, any credits or reimbursements

for which the Customer is eligible, any and all fees, including early termination fees and late fees, and any taxes billed to, and payments received from, each Customer.

3. “Consumer” shall mean any person, business, educational institution, governmental agency, and any other entity that purchases Electricity Supply services in the Commonwealth.
4. “Consumer Complaint” shall constitute any contact to a Customer Communications Channel from: (1) a Consumer; (2) a state or municipal agency communicating a complaint; or (3) another third-party acting on behalf of a Consumer to a Customer Communications Channel that describes any conduct that, if proven, would constitute a violation of the terms of this Assurance, G.L. c. 164, § 1F, 940 CMR §§ 3.00 *et seq.*, 6.00 *et seq.*, and/or 19.00 *et seq.*, or where a Consumer claims that he or she had any justifiable misunderstanding relative to the purchase of Electricity Supply from Viridian arising from such Consumer’s contact with any Viridian Agent. A Consumer Complaint would not be justifiable if Customer clearly agreed to a documented term, such as rate, early termination fee (“ETF”), length of contract, as documented by recorded third-party verification (“TPV”) or contractually in writing.
5. “Customer” shall mean any person, business, educational institution, governmental agency, and any other entity with a meter or meters located within the Commonwealth for which Viridian (a) initiated Electricity Supply services; and/or (b) issued bills or charges for Electricity Supply services and/or early termination fees, even if Electricity Supply services were never provided to such Customers.

“Customer,” however, shall not include any nonresidential Customer whose usage, as of the Effective Date and as reviewed annually on the anniversary of the Effective

Date, exceeds or is estimated to exceed 100,000 kilowatt hours for at least 12 consecutive billing months.

6. "Customer Communication Channel" shall mean any method of communication, including but not limited to phone and electronic mail, which Viridian designates for the purpose of receiving complaints, questions, concerns, or inquiries from Customers or state or municipal entities communicating Consumer concerns. For the avoidance of doubt, a communication to a Viridian Associate is not a "Customer Communication Channel" under this Assurance.
7. "Department" shall mean the Department of Public Utilities.
8. "Distribution Company" shall mean that term as it is defined in G.L. c. 164, § 1.
9. "Door-to-Door Sale" shall mean the sale of competitive electric supply services in which the buyer's agreement to purchase is initiated by a sales person, unknown to the buyer, who physically visits a Consumer's residence with the intent to make a sale.
10. "Eligible Customers" shall be those Customers who are eligible for restitution pursuant to Paragraph 7 of Attachment A to this Assurance.
11. "Electricity Supply" shall mean the sale or provision to a Retail Customer (as that term is defined by G.L. c. 164, § 1) of electricity previously purchased at wholesale prices.
12. "Fixed Rate Contract" shall mean a contract sold or marketed by Viridian with an Electricity Supply rate that is guaranteed to stay the same throughout the duration of the agreement, not including any renewal period, subject to the terms and conditions of the Electricity Supply agreement between the Customer and Viridian.

13. “Introductory Rate” shall mean an electricity rate charged to a Customer during the initial stages of a contract for Electricity Supply services that has a predetermined lower rate, with a predetermined increase to the rate to be charged over the remaining balance of the contract.
14. “Marketing Materials” shall mean all sales presentation scripts, third-party verification scripts, form Electricity Supply contracts, training materials, disclosures required by 220 C.M.R. § 11.06, form correspondence, brochures, websites, and other Customer-facing hard-copy or electronic material created and authorized by Viridian and used in connection with the sale or marketing of Electricity Supply services to Consumers.
15. “Network Marketing” shall mean a direct selling method in which Viridian Associates market and sell Electricity Supply services to family, friends, and other acquaintances. A sale conducted through Network Marketing shall not be considered a Door-to-Door Sale under this Assurance.
16. “Platinum Advertising” shall mean Platinum Advertising II LLC, a third-party marketer with a principal office at 4911 East Street Road, Suite A, Trevose, PA 19053, which was formerly engaged to conduct Door-to-Door Sales for Viridian in the Commonwealth.
17. “Supplier” shall mean that term as it is defined in G.L. c. 164, § 1.
18. “Variable Rate Contract” shall mean a contract sold or marketed by Viridian prior to the Effective Date with an Electricity Supply rate that could change as frequently as once a month. An index rate product in which the rate is set by a public index with a fixed adder is not a Variable Rate Contract.

19. “Viridian Agent” shall mean any real person who markets or sells Viridian’s Electricity Supply services in the Commonwealth.
20. “Viridian Associate” shall mean any person, business, educational institution, non-profit organization, and any other entity that conducts sales in Massachusetts as an independent contractor for Viridian through Network Marketing. No employee, agent, or representative of Platinum Advertising shall be deemed a Viridian Associate under this Assurance.

II. PARTIES SUBJECT TO ASSURANCE

21. This Assurance shall apply to the Commonwealth and to that entity holding Department license number CS-076, which currently carries the Viridian name, acting directly or indirectly, individually or through its employees, agents, successors, and assigns, or through any corporate or other device, regarding the sale or provision of Electricity Supply services in the Commonwealth of Massachusetts and shall constitute a continuing obligation. Viridian shall not change its name on the license and shall cause all corporate affiliates, including parent affiliates and subsidiaries, to not seek any such new license in the Commonwealth of Massachusetts for the sale or provision of Electricity Supply services until the termination of this Assurance.

III. ALLEGATIONS

22. The Commonwealth alleges that Viridian, directly and through its agents, engaged in policies and practices in violation of G.L. c. 93A and G.L. c. 164, § 1F and the regulations promulgated thereunder, in the course of marketing retail Electricity Supply to Consumers, beginning in or around June 2012.
23. The Commonwealth believes that it may have potential claims against Viridian based

on the following, without limitation:

- a. Viridian Associates allegedly represented to Consumers that Viridian's Variable Rate Contracts would provide "savings over time," when it is alleged by the Commonwealth that certain Customers entering into those contracts ultimately paid more than they would have paid if they had received Basic Service Electricity Supply from their Distribution Company.
 - b. Viridian Associates allegedly switched Customers to Viridian's Electricity Supply services without those Customers' authorization;
 - c. Viridian, through its third-party agent Platinum, engaged in an alleged pattern of misrepresentations and aggressive sales tactics during its sales campaign in 2014 and 2015; and
 - d. Viridian allegedly misrepresented in hard copy advertising sent to Massachusetts Consumers that "savings" were likely to be realized from its Electricity Supply contracts.
24. Viridian denies all wrongdoing, including the allegations in Paragraphs 22-23. This Assurance shall in no way be construed as an admission of liability or wrongdoing.

IV. PAYMENTS

25. Pursuant to G.L. c. 93A, § 5, Viridian agrees to a settlement in the sum of \$5,000,000. The aforementioned payment shall be made in the manner and times described in the ensuing paragraphs in this Section IV:
26. On or before June 15, 2018, Viridian shall pay the amount of \$1,800,000 to an independent trust fund (the "Restitution Fund"). The Restitution Fund shall be administered pursuant to Attachment A of this Assurance. If the Trustee of the

Restitution Fund has not been appointed within thirty (30) days of the Effective Date, Viridian shall make the aforementioned payment to the AGO, which in turn will make the payment to the Restitution Fund promptly upon the appointment of the Trustee.

27. On or before thirty (30) days following the Effective Date, Viridian shall pay the amount of \$200,000 to the AGO, pursuant to G.L. c. 12, § 4A, to be distributed by the AGO, in its sole discretion, for the purpose of assisting the AGO, in the discharge of her duties, namely, the enforcement of the consumer protection laws, including without limitation, the investigation, market analysis, mediation, and enforcement of consumer protection issues relating to the competitive Electricity Supply market and provided further that if, after two years no such investigation, meditation, or enforcement has taken place, as a payment to the Massachusetts General Fund.
28. On or before seven (7) months following the Effective Date, Viridian shall pay the amount of \$921,000 to the Restitution Fund.
29. On or before seven (7) months following the Effective Date, Viridian shall pay the amount of \$79,000 to the AGO, pursuant to G.L. c. 93A, § 5 and G.L. c. 12, § 4A, for the purpose of assisting the AGO in the administration of its duties under this Assurance, and, in the AGO's sole discretion, to offset the costs of the AGO's underlying investigation of Viridian.
30. On or before thirteen (13) months following the Effective Date, Viridian shall pay the amount of \$1,000,000 to the Restitution Fund.
31. On or before nineteen (19) months following the Effective Date, Viridian shall pay the amount of \$875,000 to the Restitution Fund.

32. On or before nineteen (19) months following the Effective Date, Viridian shall pay the amount of \$125,000 to the Massachusetts General Fund.

V. CONDUCT-BASED RELIEF

33. Viridian and its agents, servants, employees, sales and customer service representatives, successors or assigns, directly or indirectly, alone or in active concert or participation with others, through any corporation, partnership, trust, association, franchise, distributorship or other device, shall cease from engaging or assisting, in any way, now or in the future, in any conduct that is unlawful pursuant to G.L. c. 164, § 1F, G.L. c. 93A and the regulations promulgated pursuant to these statutes, including, but not limited to, any conduct that violates 940 C.M.R. 3.00 *et seq.*, 940 C.M.R. 6.00 *et seq.*, and 940 C.M.R. 19.00 *et seq.* This obligation shall extend to any amendments to any of the statutes and regulations referred to in this paragraph, regardless of whether said amendments occurred before or occur after the Effective Date of this Assurance. For a period of three (3) years from the Effective Date, the Attorney General shall provide Viridian with each and every Consumer Complaint going forward that the AGO receives so Viridian can proactively correct any alleged issues. However, the AGO may redact such complaints to remove any highly sensitive personal or financial information in any such Consumer Complaint and Viridian may only use such information to evaluate its past compliance with the laws of the Commonwealth for the purposes of improving its compliance processes. But in no case shall such redactions remove the material that Viridian needs to understand the conduct and what the basis of the complaint is.
34. Viridian shall not use the services of any entity, including its own subsidiaries and

affiliates, to facilitate or otherwise arrange for the purchase and sale of Electricity Supply services, unless said entity has submitted an application for a license to the Department pursuant to 220 CMR § 11.05(2) or received written confirmation from the Department that no license is required; nor shall Viridian use the services of any entity, including its own subsidiaries and affiliates, to facilitate or otherwise arrange for the purchase and sale of electricity products in any manner that violates the terms of 220 CMR § 11.05(5) as interpreted by the Department in a written order, whether such terms continue to appear at 220 CMR § 11.05(5) or are re-codified at another section of the CMR. This paragraph 34 shall apply to entities engaging in telemarketing, door-to-door sales and other similar marketing activities on behalf of Viridian but shall not apply to Viridian Associates, TPV providers or entities engaged in activities that provide support services for marketing activities, such as direct mail fulfillment centers and websites that list offers of numerous suppliers.

35. For a period of three (3) years following the Effective Date of this Assurance, Viridian shall determine the monthly prices for all of its Massachusetts Customers on Variable Rate Contracts as of the Effective Date consistently with the terms of Viridian's March 23, 2018 correspondence to the AGO regarding variable pricing.
36. Viridian shall bill all Customers consistently with the terms of each Customer's Electricity Supply agreement with Viridian. An operational error that is corrected in a reasonable amount of time shall not constitute a violation of this provision.
37. For a period of two (2) years following the Effective Date of this Assurance, Viridian shall not market or sell Electricity Supply agreements to Customers through Door-to-Door Sales. For the avoidance of doubt, this paragraph shall not apply to sales

conducted via Network Marketing as defined in this Assurance.

38. For a period of three (3) years from the Effective Date of this Assurance, Viridian shall not market or sell new Variable Rate Contracts to residential Customers or nonresidential Customers who, as of the Effective Date and as reviewed annually on the anniversary of the Effective Date, have an average monthly usage of less than 850 kWh per month and 4 kW of demand. For purposes of this paragraph 38, a contract pursuant to which a rate is determined pursuant to an index, methodology, or formula based on publicly available information is not a Variable Rate Contract.
39. For a period of two (2) years following the expiration of the two-year period applied in paragraph 37 of this Assurance, Viridian shall not solicit or enroll Customers through Door-to-Door sales in the neighborhood of Dorchester in Boston or in the municipalities of Brockton, Fall River, Lawrence, Lynn, Mattapan, New Bedford, Springfield, or Worcester.
40. Viridian shall record all Massachusetts Consumer Complaints it receives and shall identify the person or persons whose conduct allegedly precipitated the Consumer Complaint to the extent that the Consumer is able to identify the person or persons or to the extent Viridian can identify such person or persons through the exercise of reasonable due diligence. For a period of three (3) years following the Effective Date of this Assurance, Viridian shall prohibit any Viridian Agent who receives three Massachusetts Consumer Complaints in any rolling six-month period from working on behalf of Viridian. Viridian shall institute such prohibition for each such Viridian Agent regardless of whether it believes that one or more of the Consumer Complaints lack merit.
41. No later than thirty (30) business days after the Effective Date of this Assurance and

for 30 months thereafter, Viridian shall send renewal notices 30–60 days before renewing any Electricity Supply agreement between Viridian and an Eligible Customer on a Fixed Rate.

42. No later than thirty (30) calendar days after the Effective Date of this Assurance and for 30 months thereafter, Viridian shall:

- a. not include in any current, new or revised Marketing Material any representation or instruction to represent, in any manner, expressly or by implication, that a Consumer will save, or is likely to save, money on electricity bills as a result of switching to Viridian as an electricity Supplier unless such savings is guaranteed in writing for the term. For the avoidance of doubt, Viridian may not include any current, new or revised Marketing Material representations or instructions concerning any type of savings, including but not limited to, “savings over time” and “estimated savings;”
- b. where Viridian quotes an Introductory Rate in a current, new or revised Marketing Material, Viridian shall provide a complete and accurate disclosure that immediately precedes or follows such quote that both informs the Consumer that the quoted rate is an Introductory Rate and discloses the time period during which such Introductory Rate will be effective and the rate that will apply following the Introductory Rate and shall modify its training program for new Viridian Associates marketing in Massachusetts such that new Viridian Associates are trained to make the same disclosures in any oral presentation to potential Customers when quoting an Introductory Rate;
- c. not request, or include in any current, new, or revised Marketing Material a

request for or instruction to request a Consumer's electricity account information, including but not limited to any requests for a copy of the Consumer's electricity bill, until such time as the Consumer expressly indicates that he or she is prepared to enter into a contract to purchase his or her Electricity Supply from Viridian.

43. No later than sixty (60) calendar days after the Effective Date of this Assurance, Viridian shall provide re-training to all Viridian Associates selling in Massachusetts to explain that:
- a. they are not permitted to represent "savings over time" or otherwise imply savings, despite the inclusion of the phrase "savings over time" in previous training and Marketing Materials unless such savings is guaranteed in writing for the term;
 - b. where they quote an Introductory Rate, Viridian Associates must inform Consumers that the quoted rate is an Introductory Rate and disclose the time period during which such Introductory Rate will be effective and the rate that will apply following the Introductory Rate; and
 - c. they are not permitted to request a Consumer's electricity account information, including but not limited to any requests for a copy of the Consumer's electricity bill, until such time as the Consumer expressly indicates that he or she is prepared to enter into a contract to purchase his or her Electricity Supply from Viridian.

VI. COMPLIANCE

44. On a quarterly basis, beginning on June 1, 2018 and continuing until June 1, 2020, Viridian shall submit an affidavit to the AGO that describes actions taken by Viridian to comply with this Assurance.

45. If Viridian is not in compliance with this Assurance, the aforementioned affidavits shall include a remedial plan for bringing Viridian in compliance with this Assurance.
46. For the avoidance of doubt, the delivery of the affidavits described in this Section VI shall not in any way limit the AGO's rights to investigate, bring an action, or otherwise pursue relief for future violations of this Assurance following the Effective Date of this Assurance or future violations of the laws of the Commonwealth, including but not limited to, G.L. c. 93A, following the Effective Date of this Assurance.
47. Viridian will create and maintain, for a period of four (4) years from the Effective Date of this Assurance, all records necessary to demonstrate Viridian's compliance with its obligations under this Assurance and will provide such records to the AGO upon request.
48. Pursuant to this Assurance, the AGO may request, orally or in writing, documents or information relative to Viridian's actions in the Commonwealth Electricity Supply market following the Effective Date of this Assurance, and Viridian shall comply with all such requests.

VII. NOTICES

49. All notices and documents required by this Assurance shall be provided in writing to the parties as follows:
 - a. If to the AGO:

Joseph F. Dorfler
Assistant Attorney General
Energy & Telecommunications Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108

b. If to Viridian:

Nuala E. Droney and Joey Lee Miranda
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103

cc: Chief Legal Officer
Crius Energy, LLC
535 Connecticut Avenue, Floor 6
Norwalk, CT 06854

50. Within thirty (30) calendar days of the Effective Date of this Assurance, Viridian shall deliver a copy of this Assurance to all current principals, officers, and directors with responsibility for the Massachusetts market, and shall secure from each such person a signed and dated statement acknowledging receipt of the Assurance. For new principals, officers, and directors with responsibility for the Massachusetts market, Viridian will, for a period of three (3) years following the Effective Date of this Assurance, provide a copy of this Assurance to each such person immediately upon their assuming such position or responsibilities. Viridian shall secure and maintain all acknowledgments of receipt of this Assurance and shall make them available for inspection by the AGO upon request of the AGO.
51. Viridian shall prepare a handout for its Viridian Agents in Massachusetts, explaining the provisions of this Assurance as they relate to activities of those Agents on behalf of Viridian. Viridian shall provide this handout to the AGO for its review by thirty (30) calendar days after the Effective Date. Viridian shall provide the handout to its then current Massachusetts Agents, with an instruction on the importance of complying with the provisions within thirty (30) calendar days after the AGO approves its content. For a period of three (3) years following the Effective Date of

this Assurance, Viridian shall provide the handout, with the presentation, to any new Agents in Massachusetts during their initial training.

VIII. GOVERNING LAW

52. The provisions of this Assurance shall be construed in accordance with the laws of the Commonwealth of Massachusetts.

IX. MISCELLANEOUS

53. Compliance with this Assurance resolves and settles all civil claims alleged by the AGO herein, or which the AGO alleged or could have alleged, whether known or unknown, against Viridian, its parent corporations, affiliates, Viridian Associates, agents, subsidiaries and subdivisions, officers, employees or shareholders, as well as any of its successors, assigns, and/or purchasers of all or substantially all of its assets, based on facts contained in documents and testimony provided by Viridian to the AGO up to the Effective Date and facts regarding Viridian's actions regarding the marketing and sale of Electricity Supply that are publicly available as of the Effective Date; however, this release shall not include any claims that may be brought pursuant to G.L. c. 12, § 5A. The AGO reserves all other claims against Viridian, including, but not limited to, future claims against Viridian involving alleged violations of G.L. c. 93A that arise after the Effective Date of this Assurance. Nothing in this Assurance resolves, settles, or otherwise affects any claim or action that has been or could be brought against Viridian by any other person or administrative or regulatory agency or which is not civil in nature. Notwithstanding the earlier provisions of this paragraph 53, nothing in this Assurance resolves, settles, or otherwise affects any claim or action that has been or could be brought by the AGO against Platinum

Advertising and its representatives.

54. Pursuant to G.L. c. 93A, § 5, violation of this Assurance shall constitute prima facie evidence of a violation of G.L. c. 93A, § 2(a) in any action or proceeding commenced by the AGO.
55. This Assurance shall be binding upon Viridian and any of Viridian's agents, subsidiaries, subdivisions, successors, assigns, and/or purchasers of all or substantially all of its business assets. No change in ownership or relocation will alter in any way the responsibilities under this Assurance. Viridian shall provide a signed copy of this Assurance to any successor or assign.
56. This Assurance shall be effective from the Effective Date and for a period of three (3) years thereafter, after which time, this Assurance will terminate and the parties will have no further obligations under this Assurance except for those obligations under Paragraph 37 (door-to-door), Paragraph 47 (document retention), and the obligations described in Attachment A in the event that any of those obligations have not yet been completed as of three (3) years from the Effective Date.
57. Nothing in this Assurance shall be construed as relieving Viridian of its duty to comply with all applicable federal, state, and local laws, regulations, rules, and permits. Pursuant to G.L. c. 164, § 1F, at all times while Viridian engages in the marketing and sale of Electricity Supply in the Commonwealth, Viridian shall maintain a license to do so with the Department. Immediately following the Effective Date of this Assurance, the AGO shall notify the Department of the resolution of its investigation concerning Viridian, and the AGO shall communicate in writing, with a copy to Viridian, that it does not object to any renewals of licenses held by Viridian.

Further, the AGO shall not object to the application for, or any renewals of, such license(s) unless the AGO has filed a civil action that alleges that Viridian has violated the Assurance or has otherwise violated G.L. c. 93A subsequent to entering into this Assurance.

58. The provisions of this Assurance shall be severable and should any provision be declared by a court of competent jurisdiction to be unenforceable, the other provisions of this Assurance shall remain in full force and effect.
59. Consent to this Assurance does not constitute affirmative approval by the AGO of any of Viridian's business acts and practices, and Viridian shall make no representations to the contrary.
60. This Assurance contains the complete agreement between the parties, and supersedes any prior communication, understanding, or agreements, whether written or oral, concerning the subject matter of this Assurance.
61. This Assurance may be amended upon written agreement of all parties. For good cause shown, any time period within which a party must perform, or begin to perform, or complete any obligation of this Assurance shall be extended upon request of any party only upon a material change of circumstances that could not have been reasonably anticipated, or upon other good cause shown, and such extension shall not be unreasonably withheld. Any such extension shall automatically toll the four-year termination provision described in paragraph 56 during the duration of such extension.
62. This Assurance may be signed in multiple counterparts, each of which will be considered an original and all of which, when considered together, will constitute a

whole.

63. Except for the purposes of the enforcement of this Assurance, no part of this Assurance, nor any negotiations leading up to this Assurance or documents exchanged as part of such negotiations, shall be construed or admitted into evidence in any proceeding as an admission of liability by Viridian, and any such liability is expressly denied by Viridian.
64. This Assurance becomes effective upon May 1, 2018, and all periods of time described herein commence as of that date (the "Effective Date").

VIRIDIAN ENERGY, LLC


By:



Chaitu Parikh
Chief Operating Officer
Viridian Energy, LLC

COMMONWEALTH OF
MASSACHUSETTS

MAURA HEALEY
ATTORNEY GENERAL



Nathan C. Forster, BBO #666435
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ATTACHMENT A: RESTITUTION FUND

1. Pursuant to this Assurance, Viridian shall pay a total of \$4,596,000 to the Restitution Fund for the purpose of providing restitution to certain Customers. The administration of the Restitution Fund shall be overseen by a Trustee, to be mutually agreed upon by the AGO and Viridian. If the AGO and Viridian cannot agree on the selection of the Trustee within thirty (30) days after the Effective Date of this Assurance, the AGO shall choose the Trustee at its sole discretion. If, for any reason, the selected Trustee is unable to fulfill its responsibilities, the AGO shall select a replacement Trustee, after consulting with Viridian, for the duration of the Trustee's responsibilities under this Assurance.

2. The Trustee shall deposit the Restitution Fund into one or more interest-bearing accounts with interest rates at the time of the aforementioned deposit that are at least equal to the highest interest rate available from among the five largest banks in the City of Boston. The Trustee shall not make investments of and disbursements from the Restitution Fund without first obtaining the written consent of the AGO.

3. The fees and costs associated with the Trustee's administration of the Restitution Fund shall be paid by Viridian, and shall be separate and apart from the payments required by Section IV of this Assurance. However, should the total fees and costs associated with the Trustee's administration of the Restitution Fund exceed \$526,000, Viridian may pay any fees and costs in excess of \$526,000 from any amounts then remaining or to be deposited in the Restitution Fund. If there are funds, including any funds from interest, remaining in the Restitution Fund once all checks to Eligible Customers have been cashed, deposited, or had payment stopped, Viridian can use up to \$400,000 of such funds remaining in the Restitution Fund to pay the fees and costs associated with the Trustee's administration of the Restitution.

4. At a date to be agreed upon, but in no event later than sixty (60) calendar days after the Effective Date of this Assurance, Viridian shall provide to the AGO and the Trustee a copy of the Billing Data Document as described in this Assurance.

5. To the extent such information is necessary to allow for the administration of the Restitution Fund, Viridian shall comply with each request by the Trustee or the AGO for additional billing, payment, and other materials and/or information within ten (10) business days after receiving said request.

6. The AGO shall provide to Viridian, within sixty (60) days of the Effective Date of this Assurance, a copy of each Consumer Complaint regarding Viridian filed with the AGO. However, the Attorney General may redact such complaints to remove any highly sensitive personal or financial information in any such Consumer Complaint; but in no case shall such redactions remove the material that Viridian needs to understand the purported conduct and basis of the complaint. Viridian may only use such information to evaluate its past compliance with the laws of the Commonwealth for the purposes of improving its compliance processes.

7. The term “restitution,” as used herein, is defined as: (1) for Customers enrolled in Variable Rate Contracts or enrolled in any contract through Platinum Advertising, the difference between what the Customer paid to Viridian, including any early termination fees, taxes, or other charges, and what they would have paid had they received Basic Service at a fixed rate from their Distribution Company, including any taxes or other charges, prior to the Effective Date of this Assurance (“Delta”); (2) for Customers who enrolled in a Fixed Rate Contract with a three-year term during the period of September 1, 2014 through August 31, 2015, the Delta; and (3) for Customers on a Fixed Rate Contract who were automatically renewed on Variable Rate Contracts, the Delta while the Customer was on the Variable Rate Contract. Restitution shall be

calculated by the Trustee based on the Billing Data Document. The restitution amount for Customers who have previously received a credit or reimbursement from Viridian will be discounted by the amount of such credit or reimbursement.

8. Under the Restitution and Relief Program (the "Program"), the Trustee shall identify each Customer who is eligible for restitution under Paragraph 7 of this Attachment A, who shall each receive a check for their pro-rated share of the monies in the Restitution Fund during the applicable phase of the Program. Each check's pro-rated share shall be calculated by the Trustee. Within five business days of the Trustee sending out checks, Trustee shall provide Viridian with a list of the Customers, pro-rated shares and date that checks were sent out. Each Customer who receives a check shall not have any right to restitution until such Customer deposits or cashes the received check. Viridian shall have no liability for any claims that funds in the Restitution Fund constitute "Unclaimed Property" under M.G.L c. 200A.

9. The Trustee shall conduct the Program in four phases. Each phase shall correspond to the payments made to the Restitution Fund pursuant to Section IV of this Assurance. The AGO, Viridian, and the Trustee, shall negotiate in good faith to determine the start date and end date of each phase before such phase is commenced. However, in no event shall the time for a phase be less than one hundred twenty (120) days.

10. During the first phase, the Trustee shall:

- a. Identify each Customer who may be eligible for restitution under Paragraph 7 of this Attachment A, and calculate that Customer's pro-rated share of the \$4,596,000 total that will be made available for all Eligible Customers.
- b. The Trustee, through a random selection of Eligible Customers, shall

designate a number of the Eligible Customers who shall receive a check during the first phase (“Phase 1 Eligible Customers”). The Trustee shall elect a sufficient number of Customers to ensure that substantially all of the monies then deposited in the Restitution Fund (i.e., the \$1,800,000 payment made pursuant to Paragraph 26 of this Assurance) will be exhausted if all of the Phase 1 Eligible Customers cash the checks issued from the Restitution Fund.

- c. Trustee shall commence the restitution phase by sending letters regarding the Assurance and the Program (the “Program Letters”) in the form attached as Attachment B.
- d. With each Program Letter, the Trustee shall include a check from the Restitution Fund in the appropriate amount as calculated under Paragraph 7 of this Attachment A. The Program Letter shall include in prominent type and font a statement that if any check for payment of restitution sent to a Customer remains uncashed after ninety (90) days, the Trustee may permanently stop payment on the check, and the Customer will not have any claim to funds. For Customers whose contractual status at the time of the Program Letter would require the Customer to pay a termination fee to Viridian to cancel their current contract with Viridian, the Program Letter shall also inform those Customers that they have a one-time right within thirty (30) days to terminate their current contract with Viridian without paying any fee.
- e. To the extent that the Trustee determines that a restitution recipient

requires a completed Internal Revenue Service (“IRS”) Form 1099-MISC, the Trustee shall furnish such a form to the Customer at a time and in a manner in accordance with the IRS requirements and the accepted standards of the accounting profession.

- f. If a Program Letter is returned as undeliverable, the Trustee shall attempt once to contact the recipient by email message or telephone, to the extent such contact information was provided to Viridian by the Customer. Each email or voicemail message shall inform the Customer of the purpose of the message and state that the Customer will have no right to his or her share of the Restitution Fund monies if no response is received by the end date of the phase, and shall provide a telephone number and email address by which the Customer may contact the Trustee. If alternate Customer contact information is unavailable, the Customer shall be deemed to have waived his or her claim to restitution.

- g. No later than thirty (30) days after the end date of the phase, the Trustee shall stop payment on all checks issued during the phase.

11. During the second, third, fourth, and any subsequent phase, the Trustee shall:

- a. Identify each Customer who may be eligible for restitution under Paragraph 7 of this Attachment A who has not been sent a Program Letter and check during a previous phase. The Trustee shall calculate each such Eligible Customer’s pro-rated share of the sum of the (1) current balance of the Restitution Fund and (2) the total amount that remains to be paid pursuant to Section IV of this Assurance.

- b. The Trustee, through random selection of Eligible Customers, shall designate a number of the Eligible Customers who shall receive payment during the phase. The Trustee shall elect a sufficient number of Customers to ensure that substantially all of the monies currently deposited in the Restitution Fund will be exhausted if those Eligible Customers are paid from the Restitution Fund.
- c. The Trustee shall then follow the same procedure for the phase as described in Paragraph 10(c–g) of this Attachment A.
- d. The Trustee shall issue a new check to a Customer under the following circumstances:
 - i. The Customer or other authorized person contacts the Trustee, the AGO, or Viridian and requests that the check be reissued;
 - ii. The Customer or authorized person makes such request no later than sixty (60) days following the end date of the final phase;
 - iii. The Customer or other authorized person offers compelling reasons to re-issue a check; and
 - iv. Sufficient funds exist in the Restitution Fund to reissue the check.
- e. In the event of a Customer request to reissue a check pursuant to Paragraph 11(d) of this Attachment A, the Trustee, the AGO, and Viridian shall confer regarding the decision to reissue or not reissue the check to

the Customer and, if a decision is made to reissue the check, the procedure for doing so. In the event that the AGO and Viridian do not agree regarding any request to reissue a check, the decision whether or not to reissue a check shall be made by the Trustee.

12. When all checks to Eligible Customers have been cashed, deposited, or had payment stopped, as described in Paragraphs 10–11 of this Attachment A, the Trustee shall report to the AGO and Viridian the names and amount of payments made to Eligible Customers from the Restitution Fund, and the names of the Customers who did not cash or deposit the checks issued to them. At that time, the Trustee shall also report to the AGO and Viridian the total amount of money remaining in the Restitution Fund, if any.

13. No earlier than ninety (90) days but no later than one hundred twenty (120) days from the termination of the final phase of the Program, the Trustee shall assess the amount remaining in the Restitution Fund. If the Trustee finds that there are no amounts remaining in the Restitution Fund, then the Program shall end and the Trustee's responsibilities shall terminate, except for those described in Paragraph 15 of this Attachment A. If the Trustee finds that there are amounts remaining in the Restitution Fund, then Viridian has the right to request and receive from the Trustee no more than \$400,000 for reimbursement of fees and costs paid for the administration of the Program. Subsequent to the aforementioned payment to Viridian, if any, the remaining monies in the Restitution Fund shall then be transferred to the AGO, pursuant to G.L. c. 12, § 4A. These monies shall be distributed by the AGO, in its sole discretion, (1) for the investigation, mediation, and enforcement of consumer issues regarding the competitive Electricity Supply market under the same terms described in Paragraph 27 of this Assurance; (2) for the purpose of assisting or educating low-income Customers regarding the competitive

Electricity Supply market; (3) as a payment to the Massachusetts General Fund; or (4) to one or more Eligible Customers who did not cash a check issued by the Trustee and contacted the AGO requesting their pro-rated share. Upon distribution of such remaining monies to the AGO, the Program shall end and the Trustee's responsibilities shall terminate, except for those described in Paragraph 15.

14. Upon request from an Eligible Customer to cancel his or her account with Viridian, Viridian shall promptly, and no later than ten (10) business days after receiving such cancellation request, notify the appropriate Distribution Company who shall administer the change of the Customer's Electricity Supply provider in accordance with G. L. c. 164, § 1F(8).

15. The Trustee and Viridian shall maintain and secure records of all communications with Customers regarding the Program, for a period of at least three (3) years. Each shall make such records available for inspection by the AGO upon fifteen (15) business days' notice.

ATTACHMENT B

[VIRIDIAN LETTERHEAD]

_____, 2018

Dear Customer:

Thank you for being a valued customer of Viridian. On March 23, 2018, Viridian entered into an agreement with the Massachusetts Office of the Attorney General (the “AGO”). The agreement resolves the AGO’s claims that Viridian may not have complied with certain provisions of the Massachusetts Consumer Protection Act in the course of marketing and selling Viridian’s electricity supply. Viridian denies any wrongful conduct but has agreed to establish a fund for the benefit of certain of its current and former customers.

The Independent Trustee who administers the Fund has determined that you are eligible to receive reimbursement for a portion of what you have paid to Viridian for electricity supply services and/or early termination fees. Accordingly, enclosed is a check in the amount that the Trustee has determined is appropriate.

If the enclosed check has not been cashed within ninety (90) days of the date of this letter, the Trustee may permanently stop payment, and you will be deemed to have waived any right to receive money from the Fund.

If you are a current Viridian customer, for a period of thirty days from the date of this letter, you may choose to terminate your account with Viridian with no termination fee and resume electricity supply services from your utility or obtain electricity from another competitive supplier. If you wish to cancel your Viridian account, you can do so by emailing [insert email] or calling [phone number and hours of operation]. If you are interested in the other products Viridian has to offer, you can call our regular customer service line at [phone number and hours of operation].

If you have any questions about the process explained in this letter, or about the product you have or had with Viridian, you can contact Viridian at [phone number and hours of operation] or anytime at [email]. The Trustee can also answer questions about this process, at [phone number and hours of operation] or anytime at [website address]. Finally, any questions concerning this communication or the parties’ agreement can be directed to the AGO’s Consumer Advocacy and Response Division at (617) 727-8400. We appreciate your choice of Viridian as your electricity supplier, and look forward to serving you in the future.

Sincerely,

Viridian